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13
14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 IN RE TRANSPACIFIC PASSENGER AIR
TRANSPORTATION ANTITRUST LITIGATION

Master File No. C 07-05634 CRB

MDL No. 1913

Assigned to Hon. Charles R. Breyer

19
20 DEFENDANT CONTINENTAL
AIRLINES, INC.'S OPPOSITION TO
21 MOTION BY CERTAIN DEFENDANTS
TO COORDINATE ARGUMENT AND
22 CONSIDERATION OF ALL
DEFENDANTS' MOTIONS TO DISMISS

23
24 Date: November 13, 2009
Time: 10:00 a.m.
Judge: Honorable Charles R. Breyer
25 Courtroom: No. 8, 19th Floor

26 This Document Relates to: ALL ACTIONS
27
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I. INTRODUCTION

Defendant Continental Airlines, Inc. (“Continental”) requests the Court deny the Motion By Certain Defendants to Coordinate Argument and Consideration of All Defendants’ Motions to Dismiss (“Motion to Coordinate Argument”) in the above captioned case. The non-Continental Defendants who signed the Motion to Coordinate Argument have not presented the Court with a sufficient explanation as to why delay at this late hour is warranted. Continental requests expedited treatment of this matter, as counsel for Continental are scheduled to depart the Washington, DC area for travel to San Francisco at 11:55am PST on Wednesday, November 11, 2009.

II. ARGUMENT

A. Continental’s Motion to Dismiss Concerns Only Continental

Continental’s Motion to Dismiss addresses matters alleged in Plaintiffs’ Consolidated Class Action Complaint (“Complaint”) as to Continental exclusively. Therefore, the only necessary participants at the forthcoming oral argument are Continental and the Plaintiffs.¹ Continental’s written submissions before the Court to date and oral presentation to the Court have focused and will continue to focus only upon allegations made as to Continental. While the non-Continental Defendants state that they intend to raise issues in their forthcoming submissions that are broadly similar to those which Continental already has raised in its filings (*e.g.*, the failure of Plaintiffs to satisfy the pleading requirements as set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)), this possibility does not negate the fact that the oral argument will be focused squarely on allegations Plaintiffs have directed against Continental – not to any other non-Continental Defendant.

B. Delay Will Prejudice Continental

Continental has expended significant resources preparing for Friday’s hearing. Continental believes its inclusion as a Defendant in the Complaint is inappropriate and

¹ Continental notes that Plaintiffs appear to have rejected the non-Continental Defendants’ efforts to delay argument. *See* Declaration of William R. Sherman In Support of Motion by Certain Defendants to Coordinate Argument and Consideration of All Defendants’ Motion to Dismiss, at 2:14-18.

Continental seeks immediately to be vindicated and dismissed from the litigation. Continental also notes it has followed the Local Rules and procedures of the Court and that the hearing date was first noticed in Continental's initial Motion to Dismiss, on October 2, 2009, more than one month ago.

C. The Non-Continental Defendants Need Not Expend Resources to Travel to San Francisco

The non-Continental Defendants suggest that it will be inefficient "to require all defendants' counsel to travel to San Francisco for a hearing on a single defendant's motion to dismiss." Motion to Coordinate Argument at 3. Continental submits that such travel is not necessary for this Continental-specific motion. Continental notes that counsel for several of the non-Continental Defendants who signed the Motion to Coordinate Argument are based in the San Francisco area, and that transcripts are readily available to all parties soon after the hearing.

III. CONCLUSION

Based on the foregoing, Continental respectfully requests the Court deny the Motion By Certain Defendants to Coordinate Argument and Consideration of All Defendants' Motions to Dismiss. As indicated above, Continental requests expedited treatment of this matter as counsel for Continental are scheduled to depart the Washington, DC-area for travel to San Francisco at 11:55am PST on Wednesday, November 11, 2009.

Dated: November 10, 2009

Respectfully submitted,

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